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In re Application of: : DECISION TO WITHDRAW  
Nakamura *et al.* : HOLDING  
Application No. 08/809,463 : OF ABANDONMENT  
Filed: July 18, 1997 :  
Attorney Docket No. 09794353-0005 :  
:

This is a decision on the petition filed April 5, 2001, and supplemented on July 19, 2001, to withdraw the holding of abandonment in the above-identified application. No petition fee is required.

The petition is **granted**.

The application was held abandoned because the period for seeking court review of the decision rendered by the Board of Patent Appeals and Interferences (BPAI) on November 28, 2000, had expired. A Notice of Abandonment was mailed on March 1, 2001.

Petitioner asserts that on January 29, 2001, a Request for Rehearing was timely filed in the above-identified application. To support this assertion, petitioner has submitted a copy of a Request for Rehearing bearing a certificate under 37 CFR 1.8(a) showing a date of deposit of January 29, 2001, and a statement which attests to the previous timely mailing of the Request for Rehearing.

A review of the application file record reveals that the above-identified Request for Rehearing is not of record in the application file and cannot be located. However, 37 CFR § 1.8(b) provides for accepting a correspondence as being timely filed if it was mailed or transmitted in accordance with 37 CFR § 1.8(a), and is reproduced below:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence: (1) informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence; (2) supplies an additional copy of the previously mailed or transmitted

correspondence and certificate; and (3) includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

The petition meets the conditions of 37 CFR 1.8(b) to establish the previous filing of the Request for Rehearing.

The period for filing the Request for Rehearing expired on January 28, 2001, two months from the date of the decision rendered by the BPAI. As January 28, 2001, was a Sunday, the Request for Rehearing filed January 29, 2001, is considered to be timely pursuant to 37 C.F.R. 1.7.

For the above stated reasons, the petition is **granted**. The Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The copy of the Request for Rehearing submitted with the petition on March 1, 2001, is hereby accepted since the request originally submitted was apparently lost.

The application file is being forwarded to the Board of Patent Appeals and Interferences for consideration of the Request for Rehearing.

Inquiries regarding this decision should be directed to Ed Glick at (703) 308-4858.



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